

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ANGELO LOPES

Plaintiff,

-against-

Case No.:  
20-CV-00314

**ANSWER**

JLM DECORATING NYC INC., COSMOPOLITAN  
INTERIOR NY CORPORATION, JLM  
DECORATING, INC., CITY VIEW BLINDS OF N.Y.  
INC., MOSHE GOLD, JOEL GOLD a/k/a SAM  
GOLD a/k/a SHIMMY GOLD, and MARITZA  
RODRIGUEZ a/k/a MARITZA SIME

Defendants.

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Defendants JLM Decorating, Inc., Cosmopolitan Interior NY Corporation, JLM  
Decorating, Inc., City View Blinds of N.Y. Inc., Moshe Gold, Sam Gold, and Maritza Rodriguez  
(collectively “Defendants”), by and through their attorneys, Milman Labuda Law Group, PLLC,  
answer the Complaint of Plaintiff as follows:

**AS TO “NATURE OF THE CASE”**

1. Defendants admit that Plaintiff makes certain allegations contained in ¶ 1 of the  
Complaint concerning the basis of his claims, but deny that he is entitled to any recovery.

**AS TO “JURISDICTION AND VENUE”**

2. Paragraph 2 of the Complaint purports to set forth a legal conclusion to which no  
response is required. To the extent that ¶ 2 sets forth any allegations of fact to which a response  
is required, Defendants deny those allegations.

3. Paragraph 3 of the Complaint purports to set forth a legal conclusion to which no  
response is required. To the extent that ¶ 3 sets forth any allegations of fact to which a response  
is required, Defendants admit those allegations.

**AS TO “THE PARTIES”**

4. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 4 of the Complaint.

5. Defendants deny the truth of the allegations contained in ¶ 5 of the Complaint.

6. Defendants deny the truth of the allegations contained in ¶ 6 of the Complaint.

7. Defendants deny the truth of the allegations contained in ¶ 7 of the Complaint.

8. Defendants deny the truth of the allegations contained in ¶ 8 of the Complaint.

9. Defendants deny the truth of the allegations contained in ¶ 9 of the Complaint.

10. Defendants deny the truth of the allegations contained in ¶ 10 of the Complaint.

11. Defendants deny the truth of the allegations contained in ¶ 11 of the Complaint.

12. Defendants deny the truth of the allegations contained in ¶ 12 of the Complaint.

13. Defendants deny the truth of the allegations contained in ¶ 13 of the Complaint.

14. Defendants admit the truth of the allegations contained in ¶ 14 of the Complaint.

15. Defendants deny the truth of the allegations contained in ¶ 15 of the Complaint.

16. Defendants deny the truth of the allegations contained in ¶ 16 of the Complaint.

17. Defendants deny the truth of the allegations contained in ¶ 17 of the Complaint.

18. Defendants admit the truth of the allegations contained in ¶ 18 of the Complaint.

19. Defendants admit the truth of the allegations contained in ¶ 19 of the Complaint.

20. Defendants deny the truth of the allegations contained in ¶ 20 of the Complaint.

21. Defendants deny the truth of the allegations contained in ¶ 21 of the Complaint.

22. Defendants deny the truth of the allegations contained in ¶ 22 of the Complaint.

23. Defendants admit the truth of the allegations contained in ¶ 23 of the Complaint.

24. Defendants deny the truth of the allegations contained in ¶ 24 of the Complaint.

25. Defendants deny the truth of the allegations contained in ¶ 25 of the Complaint.
26. Defendants deny the truth of the allegations contained in ¶ 26 of the Complaint.
27. Defendants deny the truth of the allegations contained in ¶ 27 of the Complaint.
28. Defendants deny the truth of the allegations contained in ¶ 28 of the Complaint.
29. Defendants deny the truth of the allegations contained in ¶ 29 of the Complaint.

**AS TO “THE FACTS”**

30. Defendants deny the truth of the allegations contained in ¶ 30 of the Complaint.
31. Defendants deny the truth of the allegations contained in ¶ 31 of the Complaint.
32. Defendants deny the truth of the allegations contained in ¶ 32 of the Complaint.
33. Defendants admit the truth of the allegations contained in ¶ 33 of the Complaint.
34. Defendants admit the truth of the allegations contained in ¶ 34 of the Complaint.
35. Defendants deny the truth of the allegations contained in ¶ 35 of the Complaint.
36. Defendants deny the truth of the allegations contained in ¶ 36 of the Complaint.
37. Defendants deny the truth of the allegations contained in ¶ 37 of the Complaint.
38. Defendants deny the truth of the allegations contained in ¶ 38 of the Complaint.
39. Defendants deny the truth of the allegations contained in ¶ 39 of the Complaint.
40. Defendants deny the truth of the allegations contained in ¶ 40 of the Complaint.
41. Defendants deny the truth of the allegations contained in ¶ 41 of the Complaint.
42. Defendants deny the truth of the allegations contained in ¶ 42 of the Complaint.
43. Defendants deny the truth of the allegations contained in ¶ 43 of the Complaint.
44. Defendants deny the truth of the allegations contained in ¶ 44 of the Complaint.
45. Defendants deny the truth of the allegations contained in ¶ 45 of the Complaint.
46. Defendants deny the truth of the allegations contained in ¶ 46 of the Complaint.

- 47. Defendants deny the truth of the allegations contained in ¶ 47 of the Complaint.
- 48. Defendants deny the truth of the allegations contained in ¶ 48 of the Complaint.
- 49. Defendants deny the truth of the allegations contained in ¶ 49 of the Complaint.
- 50. Defendants deny the truth of the allegations contained in ¶ 50 of the Complaint.
- 51. Defendants deny the truth of the allegations contained in ¶ 51 of the Complaint.
- 52. Defendants deny the truth of the allegations contained in ¶ 52 of the Complaint.
- 53. Defendants deny the truth of the allegations contained in ¶ 53 of the Complaint.

**AS TO “FIRST CLAIM FOR RELIEF”**  
**[Violation of NYLL 215 by All Defendants-Retaliation]**

54. To the extent that a response is required concerning the allegations contained in ¶ 54 of the Complaint, Defendants deny the allegations.

- 55. Defendants deny the truth of the allegations contained in ¶ 55 of the Complaint.
- 56. Defendants deny the truth of the allegations contained in ¶ 56 of the Complaint.
- 57. Defendants deny the truth of the allegations contained in ¶ 57 of the Complaint.
- 58. Defendants deny the truth of the allegations contained in ¶ 58 of the Complaint.
- 59. Defendants deny the truth of the allegations contained in ¶ 59 of the Complaint.
- 60. Defendants deny the truth of the allegations contained in ¶ 60 of the Complaint.
- 61. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 61 of the Complaint, but deny any wrongdoing.

- 62. Defendants deny the truth of the allegations contained in ¶ 62 of the Complaint.
- 63. Defendants deny the truth of the allegations contained in ¶ 63 of the Complaint.
- 64. Defendants deny the truth of the allegations contained in ¶ 64 of the Complaint.

## **DEFENDANTS' AFFIRMATIVE DEFENSES**

### **FIRST AFFIRMATIVE DEFENSE**

65. Plaintiff's claims, in whole or in part, fail to state any claim upon which relief can be granted.

### **SECOND AFFIRMATIVE DEFENSE**

66. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

### **THIRD AFFIRMATIVE DEFENSE**

67. Defendant Moshe Gold is not an "employer" within the meaning of the FLSA or NYLL.

### **FOURTH AFFIRMATIVE DEFENSE**

68. Defendant Sam Gold is not an "employer" within the meaning of the FLSA or NYLL.

### **FIFTH AFFIRMATIVE DEFENSE**

69. Defendant Maritza Rodriguez is not an "employer" within the meaning of the FLSA or NYLL.

### **SIXTH AFFIRMATIVE DEFENSE**

70. At all times material hereto, the actions of Defendants were justified under the circumstances and at all times material hereto Defendants acted in a manner that was proper, reasonable, and lawful, and in the exercise of good faith.

### **SEVENTH AFFIRMATIVE DEFENSE**

71. At no time material hereto did any of the Defendants act in a willful, wanton, reckless, and/or malicious manner or with reckless disregard of either the FLSA or the New York State or City Law.

**EIGHTH AFFIRMATIVE DEFENSE**

72. Plaintiff's claims are barred, in whole or in part, because Plaintiff did not, nor could he, have either an objective or subjective belief that Defendants' alleged payroll violations were in fact violations of the FLSA, the NYLL, or any other law, rule, or regulation.

**NINTH AFFIRMATIVE DEFENSE**

73. Plaintiff was not employed by all Defendants.

**TENTH AFFIRMATIVE DEFENSE**

74. The Court should not exercise supplemental jurisdiction over the counts in the Complaint that purport to arise under the New York State Labor Law.

**ELEVENTH AFFIRMATIVE DEFENSE**

75. Plaintiff's claims are barred, in whole or in part in equity under the doctrines of unclean hands, laches, waiver, and estoppel.

**TWELFTH AFFIRMATIVE DEFENSE**

76. Plaintiff's claims for damages are barred, in whole or in part, by Plaintiff's failure to mitigate damages.

**THIRTEENTH AFFIRMATIVE DEFENSE**

77. Plaintiff is not entitled to an award of attorneys' fees.

**FOURTEENTH AFFIRMATIVE DEFENSE**

78. If Plaintiff succeeds in establishing any violation under the FLSA or the New York State Labor Law, and to the extent any sums are found due and owing to Plaintiff, which is

expressly denied, Defendants are entitled to a set-off against said sum to the extent paid, tendered, waived, compromised, and/or released prior to the adjudication herein, including but not limited to those amounts paid, tendered, waived, compromised, and/or released through any other proceeding, either formal or informal, or to the extent any additional compensation was paid to Plaintiff over and above his wages.

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

79. Defendants satisfied any and all obligations to Plaintiff that arose out of and during his employment and, therefore, this action is barred, in whole or in part, by the doctrine of accord and satisfaction.

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

80. Plaintiff's claims are barred to the extent he petitioned for bankruptcy either under Chapter 7 or Chapter 13 of the United States bankruptcy code, yet failed to disclose potential claims against Defendants as required under applicable bankruptcy laws.

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

81. Plaintiff is not entitled to any equitable relief since he has an adequate remedy at law.

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

82. The Complaint is presented in conclusory and vague terms, which prevents Defendants from anticipating all affirmative defenses and claims that may be applicable in this action. Therefore, to the extent permitted under the Federal Rules of Civil Procedure and applicable case law, Defendants reserve the right to assert additional defenses or claims that may become known during the course of discovery.

**WHEREFORE,** Defendants pray that the Court dismiss the Complaint in its entirety including each and every demand and prayer for relief contained in the Complaint, and grant such other and further relief that the Court deems just and proper.

Dated: Lake Success, New York  
March 23, 2020

MILMAN LABUDA LAW GROUP PLLC

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